

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN MACKENZIE,

Petitioner,

Case No. 1:23-cv-77

v.

Honorable Ray Kent

BRYAN MORRISON,

Respondent.

_____ /

ORDER DENYING APPLICATION TO PROCEED *IN FORMA PAUPERIS*

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, Petitioner consented to proceed in all matters in this action under the jurisdiction of a United States magistrate judge. (ECF No. 7.) Section 636(c) provides that “[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case” 28 U.S.C. § 636(c).

Petitioner has requested leave of court to proceed *in forma pauperis* (ECF No. 3) under 28 U.S.C. § 1915(a)(1) and has filed an affidavit of indigence. The filing fee for a habeas corpus action is \$5.00. 28 U.S.C. § 1914(a). The Court should only grant leave to proceed *in forma pauperis* when it reasonably appears that paying the cost of this filing fee would impose an undue financial hardship. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). It is not unreasonable to require a prisoner to devote a small portion of his discretionary funds to defray a fraction of the costs of his litigation. *See Lumbert v. Ill. Dep’t of Corr.*, 827 F.2d 257, 267 (7th Cir. 1987).

Petitioner has filed a trust account statement, which shows that over the past six months Petitioner has had an average monthly deposit of \$35.45. At the time of filing his petition, Petitioner had a spendable balance of \$71.02. Petitioner's financial documents indicate that he has sufficient resources to pay the \$5.00 filing fee. Therefore, Petitioner is not entitled to proceed *in forma pauperis* in this action. Petitioner has 28 days from the date of entry of this order to pay the \$5.00 filing fee. If Petitioner fails to pay the filing fee within the 28-day period, his case will be dismissed without prejudice. Accordingly:

IT IS ORDERED that Petitioner's application for leave to proceed *in forma pauperis* (ECF No. 3) is **DENIED**.

IT IS FURTHER ORDERED that within 28 days hereof, Petitioner shall pay the \$5.00 filing fee to the Clerk of this Court. Petitioner's failure to comply with this order will result in dismissal of this case without prejudice.

Dated: February 15, 2023

/s/ Ray Kent
Ray Kent
United States Magistrate Judge

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.